

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JACK DEATON,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-02546-JPH-MJD
)	
CONIFER INSURANCE COMPANY,)	
)	
Defendant.)	

ORDER ON MOTION TO AMEND ANSWER

This matter is before the Court on Plaintiff/Counterclaim Defendant Jack Deaton's Motion for Leave to Amend Answer *Nunc Pro Tunc*. [[Dkt. 27](#).] Defendant/Counterclaimant Conifer Insurance Company ("Conifer") has not filed a response to the motion, and the time for doing so has expired. The Court, being duly advised, **GRANTS IN PART** and **DENIES IN PART** the motion.

Because the deadline for amending pleadings in this case has passed, Deaton must demonstrate good cause for permitting the amendment he seeks. See [Fed. R. Civ. P. 16\(b\)\(4\)](#); [Trustmark Ins. Co. v. General & Cologne Life Re of Am.](#), 424 F.3d 542, 553 (7th Cir. 2005) ("To amend a pleading after the expiration of the trial court's Scheduling Order deadline to amend pleadings, the moving party must show 'good cause.'"). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking amendment." *Id.*

Deaton states in his motion that he seeks to amend his answer to change his admission of rhetorical paragraph 32 of the counterclaim to a denial because the admission is merely a

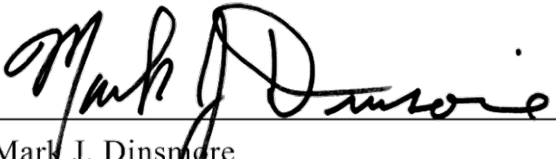
“scrivener’s error” and is inconsistent with the position he has otherwise taken in this case.

Deaton further states that he realized that the error had occurred when reviewing Conifer’s motion for judgment on the pleading, and that he filed his motion to amend “immediately upon the discovery.” [[Dkt. 27 at 3.](#)] As Conifer has not filed anything disputing this assertion or suggesting that it was misled by the error or otherwise would be prejudiced by the amendment, the Court finds that Deaton has demonstrated the requisite good cause.

However, Deaton has requested that the Court “enter the Amended Answer *nunc pro tunc* as if it had been filed at the time of the original Answer on August 16, 2019.” *Id.* Deaton does not explain why he believes a *nunc pro tunc* filing is appropriate, and the Court knows of no reason why it would be. Accordingly, Deaton’s motion to amend his answer is **GRANTED** and Deaton shall file his Amended Answer in substantially the same form as his proposed Amended Answer [[Dkt. 27-1](#)] **on or before January 31, 2020.**

SO ORDERED.

Dated: 29 JAN 2020



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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